

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3015 OF 2005

Shri Elwyn D'Souza .. Petitioner.
Vs.
Bharthi P.Mohanlal & Ors. .. Respondents.

Mr.A.J.Almeda for the petitioner.
Mrs.M.H.Mhatre A.P.P. for the State.

CORAM : D.B.BHOSALE, J.

DATED : 21ST JULY, 2006

P.C.:

. Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. This petition is directed against the order dated 5.2.2000 by which the process against the petitioner was issued under sections 405, 406, 422 and 420 of I.P.C. The respondent-complainant was working with accused no.2 - company and was drawing Rs.700/- per month prior to his termination. His order of termination was carried to the Labour Court which finally disposed of his application on 28.6.1993 and directed the company to pay 50% back wages and give continuity of the service with effect from 8.7.1984. It is against this backdrop the complainant has made the allegations against all the accused including the

present petitioner, prima facie, constituting offence under sections 405, 406, 422 and 420 of I.P.C. The petitioner challenged the order, "issue process" after more than five years. I am avoiding reference to the facts and allegations in detail, since challenge is on limited ground. The submission of Mr.Almeda, learned counsel for the petitioner is three fold. Firstly, the petitioner had resigned as Managing Director on 22.9.1986 and since then has no concern with the said company and, therefore, he is not liable to be prosecuted for the alleged offence. Secondly, the petitioner had made exgratia payment of Rs.10,000/- to the respondent-complainant, as he was asked to do so by the Court on sympathetic ground and, thirdly, my attention was drawn to the application dated 5th January, 2002 by which the complainant had applied for deleting the name of the petitioner from the array of accused. I perused the impugned order and other material placed before me. The petitioner has not produced anything on record to show that he did resign on 22nd September, 1986, as contended by the learned counsel for the petitioner, and that he had no concern whatsoever with the company thereafter. On the contrary record reveals that when the service of the petitioner was terminated with effect from 8.7.1984 the petitioner was the Managing Director of the company. Similarly, exgratia payment made by the

petitioner show that liability to pay the amount has not been denied by the accused, including the petitioner. Insofar as application seeking permission to delete the name of the petitioner from the array of the accused is concerned, it appears that no such permission was granted and the complainant prosecuted the complaint further even against the petitioner. Keeping that in view and considering that the present petition suffers from laches and gross delay I am not inclined to interfere with the order passed in February 2000. In view of the peculiar facts and circumstances of the case, the judgment relied upon in **Smt.Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others AIR 1976 SC 1947** is of no avail to the petitioner. The writ petition is, accordingly, dismissed. The trial Court is directed to dispose of the complaint as expeditiously as possible and preferably within a period of six months from the date of receipt of this order.

(D.B.Bhosale, J.)